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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,325	09/18/2003	Juan Carlos Coronado	02894-595001 / 06735-PT10	8375
26161	7590	06/14/2006	EXAMINER KEASEL, ERIC S	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			ART UNIT 3753	PAPER NUMBER

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/666,325

Applicant(s)

CORONADO ET AL.

Examiner

Eric Keasel

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) 3-5,9-18,21,22,27-33,42,43,47 and 52-68 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-8,19,20,23-26,34-41,44-46 and 48-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>see other</u> . | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> . |

Continuation of Attachment(s) 6). Other: 9/18/2003, 10/29/2003, 12/5/2003, 2/23/2004, and 6/25/2004.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, species D, subspecies X in the reply filed on March 27, 2006 is acknowledged.
2. Claims 3-5, 9-18, 21, 22, 27-33, 42, 43, 47, and 52-68 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions and/or species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 27, 2006.
3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 6, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by DiGirolamo (US Patent Number 4,357,861).

DiGirolamo discloses a beverage mixer and dispenser, comprising: a housing defining a mixing chamber (8) having an upper feed opening (7), the housing including an extract container

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(4) positioned above the upper opening of the mixing chamber and containing a powdery soluble drink extract; a metering device (6) positioned between the extract container and mixing chamber to dispense a desired amount of the drink extract from the extract container into the mixing chamber through the upper opening, for mixing with liquid in the mixing chamber to produce a beverage; and the feed opening is exposed at an exterior surface of the housing and leading into the mixing chamber, which is capable of meeting the intended use to allow manual addition of drink additives to the mixing chamber.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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7. Claims 1, 2, 6-8, 19, 20, 23-26, 34-41, 44-46, and 48-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Militello (DE 200 06 115) in view of Ogawa et al. and Swier et al.

Militello discloses an extract container (2) with a metering device (11) leading to a mixing chamber as well as a hot water supply (3) leading to the same mixing chamber. Two rotors both function as mixing and aerating rotors in separate chambers. Militello lacks the separate feed opening for allowing manual additions of drink additives. Ogawa et al. disclose a separate feed opening (33) used in a similar hot beverage mixing device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the separate feed opening of Ogawa et al. with the device of Militello in order to add additives to the hot drink mix as taught by Ogawa et al. The modified Militello fails to disclose the lid, the shape of the blades, the rotor actuated from the bottom, the funnel-shaped mixing chamber and the intended use of cream. The examiner takes official notice that the lid, the shape of the blades, the rotor actuated from the bottom, the funnel-shaped mixing chamber and the intended use of cream are old and well known in the art.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brooks et al., Greenfield, Jr. et al., Fox et al., Daloz, Pajot, Schneeberger, Gmuer et al., and Swier et al. disclose similar devices.

9. Any inquiry concerning this communication should be directed to Eric Keasel at telephone number (571) 272-4929, who can normally be reached Monday-Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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